

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHAD M. CARLSEN and SHASTA
CARLSEN, husband and wife, et al.,

Plaintiffs,

v.

GLOBAL CLIENT SOLUTIONS,
LLC, an Oklahoma limited liability
company; ROCKY MOUNTAIN
BANK & TRUST, a Colorado
financial institution,

Defendants.

NO. CV-09-246-LRS

**CERTIFICATION TO
WASHINGTON STATE
SUPREME COURT**

PURSUANT TO the Federal Court Local Law Certificate Procedure Act,
RCW 2.60.010-.030, and Washington Rule of Appellate Procedure ("RAP") 16.16,
Lonny R. Suko, Chief United States District Judge for the Eastern District of
Washington, hereby certifies:

PARTIES

Plaintiffs Chad M. and Shasta Carlsen, and Carl and Mary Popham, are
represented by Darrell W. Scott, Esq., and Matthew J. Zuchetto, Esq., 926 West
Sprague Avenue, Suite 680, Spokane, WA 99201, and Timothy W. Durkop, Esq.,
2312 N. Cherry Street, Suite 100, Spokane Valley, WA 99216.

Defendants Global Client Solutions, LLC, and Rocky Mountain Bank &
Trust are represented by Sally Gustafson Garratt, 711 Capitol Way South, Suite
605, Olympia, WA 98501 Esq., and Richard W. Epstein, Esq., Haas A. Hatic,

**CERTIFICATION TO WASHINGTON
STATE SUPREME COURT -**

1 Esq., and Rebecca F. Bratter, Esq., Trade Centre South, Suite 700, 100 W. Cypress
2 Creek Road, Ft. Lauderdale, FL 33309.

4 **QUESTIONS OF WASHINGTON LAW**

5 This is a putative class action in which Plaintiffs allege Defendants have
6 violated Washington's Debt Adjusting statute, RCW Chapter 18.28 RCW, and/or
7 aided and abetted a violation of the same, and that these violations are in
8 contravention of Washington's Consumer Protection Act (CPA), RCW Chapter
9 19.86. Global Client Solutions, LLC (GCS) is in the business of receiving funds
10 for the purpose of distributing those funds among creditors in payment or partial
11 payment of obligations of debtors, including the Plaintiffs. GCS, in partnership
12 with Rocky Mountain Bank and Trust (RMBT), maintains and manages debt
13 settlement accounts that are part of debt settlement programs offered by companies
14 such as Freedom Debt Relief, LLC, and Silver Bay Financial, Inc.. As part of their
15 debt settlement programs, Plaintiff established debt settlement accounts
16 maintained and managed by GCS, in partnership with RMBT. Freedom Debt
17 Relief, LLC, is a named defendant in a related case, *Carlsen v. Greedom Debt*
18 *Relief, LLC, et al.*, CV-09-55-LRS. Separate questions are being certified to the
19 Washington State Supreme Court in CV-09-55-LRS

20 Plaintiffs' Amended Complaint in the captioned matter, CV-09-246-LRS,
21 alleges Defendants knew that Plaintiffs were being charged fees by their debt
22 settlement companies in excess of the fees allowed by RCW 18.28.080, that
23 Defendants knowingly transferred Plaintiffs' funds out of the State of Washington
24 for the purpose of paying such fees, and subsequently paid such fees from the
25 Plaintiffs' debt settlement accounts.

26 The claims involve interpretation of provisions of the Debt Adjusting
27 statute, RCW Chapter 18.28, for which legislative history and relevant case law
28

1 are essentially non-existent. Accordingly, the issues presented appear to be of first
2 impression and it is respectfully requested that the Washington Supreme Court
3 consider and answer the following questions:
4

5 **QUESTION NO. 1:** Is a for-profit business engaged in “debt adjusting” as
6 defined in RCW 18.28.010(1) when, in collaboration with debt settlement
7 companies, it: a) establishes and maintains a custodial bank account in its name; b)
8 solicits debtors’ establishment of a sub-account to receive and hold periodic
9 payments to be used to pay debt settlement fees and pay settlements with creditors
10 as negotiated by a debt settlement company; and c) as custodian for the debtor,
11 receives and holds the debtor’s periodic payments in a sub-account, paying from
12 that account debt settlement fees and negotiated settlements with creditors?
13

14 **QUESTION NO. 2:** Does the exclusion found at RCW 18.28.010(2)(b)
15 apply to a for-profit business described in Question No. 1?
16

17 **QUESTION NO. 3:** Do the fee limitations set forth in RCW 18.28.080
18 apply to for-profit debt settlement companies engaged in soliciting the
19 participation of debtors in a debt management program involving: a) monthly set
20 aside and accumulation of a debtor’s funds in a custodial account for the purposes
21 of facilitating negotiated settlement of specified credit card debts; and b)
22 negotiations by the debt settlement company, on behalf of the debtor, to secure
23 compromise settlement of the debtor’s credit card debt, to be paid from the
24 custodial account?
25

26 **QUESTION NO. 4:** Does the Debt Adjusting statute provide for an implied
27 civil action against an alleged “aider or abettor” where aiding or abetting a
28

1 violation of the Debt Adjusting statute is expressly made a crime pursuant to RCW
2 18.28.190?

3
4 If the Washington Supreme Court decides to consider these certified
5 questions, it may in its discretion reformulate the questions. *Broad v.*
6 *Mannesmann Anlagenbau AG*, 196 F.3d 1075, 1076 (9th Cir. 1999).

8 **RECORD**

9 Attached hereto are certified copies of Ct. Rec. 1 (Complaint), Ct. Rec. 11,
10 18, 21, 28 and 31 (Defendants' Motions To Dismiss and memoranda in support
11 thereof), Ct. Rec. 33 (Plaintiffs' response to Motions To Dismiss) Answer to
12 Second Amended Complaint), Ct. Rec. 38 (Defendants' reply memorandum re
13 Motions To Dismiss), Ct. Rec. 40 (Order Denying Motions To Compel Arbitration
14 and staying Motions To Dismiss), Ct. Rec. 57, 58 and 59 (Declarations of Darrell
15 W. Scott with attached exhibits), Ct. Rec. 70 (Declaration of Richard W. Epstein
16 with attached exhibits), and Ct. Rec. 83 (Amended Complaint).

17 This constitutes the "record" pursuant to RCW 2.60.010(4). This "record"
18 contains all matters in the pending cause material for consideration of the certified
19 questions.

21 **BRIEFS**

22 If the Washington State Supreme Court accepts certification, the Plaintiffs
23 shall file the first brief in the Washington Supreme Court. RAP 16.16(e)(1).

s/Lonny R. Suko

**CERTIFICATION TO WASHINGTON
STATE SUPREME COURT - 5**